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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/758,768
Filing Date: January 16, 2004
Appellant(s): NGO ET AL.

Phouphanomketh Ditthavong
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 15, 2010 appealing from the Office action mailed October 15, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

Claims 1 – 22 and 24 were rejected under 35 U.S.C. 103 based on Duske, Jr. et al. (U.S. Patent 6,992,991), in view of Hanson et al. (U.S. Patent Publication 20030120811).

Claims 23 and 25 were rejected under 35 U.S.C. 103 based on Duske, Jr. et al. (U.S. Patent 6,992,991), in view of Hanson et al. (U.S. Patent Publication 20030120811), further in view of Klein (U.S. Patent 6,178,523).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,992,991	Duske, Jr. et al.	01-2006
20030120811	Hanson et al.	06-2003
6,178,523	Klein	01-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1 - 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frederick J. Duske, Jr. et al. (U.S. Patent 6,992,991, hereinafter, Duske) in view of Aaron D. Hanson et al. (U.S. Patent Publication 2003/0120811, hereinafter, Hanson).

With respect to claim 1, Duske teaches:

storing a first information element in a device log in the telemetry device (i.e. messages are stored in the device message logs in either an outgoing message log (OML) or saved message log (SML), column 28, lines 1-9, see FIG 8-5),

determining whether the first information element includes a first priority level indication (i.e. when user creates message, they must specify the message priority which determines when the message should be sent, column 20, lines 40-63),

storing a second information element in the device log (i.e. messages are stored in the device message logs in either an outgoing message log (OML) or saved message log (SML), column 28, lines 1-9),

determining whether tile second information element includes a second priority level indication (i.e. when user creates message, they must specify the message priority which determines when the message should be sent, column 20, lines 40-63),

transmitting a first message based on the first information element from the telemetry device for receipt by an operation unit (i.e. message is transmitted by the

AMC (adaptive mobile communication), received by the satellite network, column 7, line 56 – column 8, line 3), and

after transmitting the first message, transmitting a second message based on the second information element from the telemetry device for receipt by the operation unit, wherein an ordering of transmission is based on the first and second level priority indications (i.e. messages will be sent in order with respect to their priority levels and the position in the queue, column 30, lines 64-67, see FIG 8-11).

FIG. 8-5

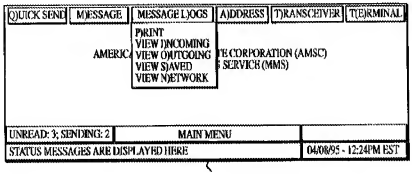
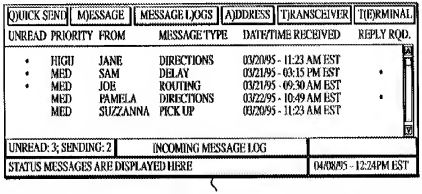


FIG. 8-11



Duske does not explicitly disclose the storage of two separate information elements of different levels in two separate data structures as claimed.

However, Hansen teaches:

storing the first information element in a first data structure in the telemetry device when it is determined that the first information element includes the first priority level indication (i.e. messages are stored in corresponding queues according to their priority level, [0089], where priorities are weighted and handled according to their weighting, [0175], also see Fig. 9), and

storing the second information element in a second data structure in the telemetry device when it is determined that the second information element includes the second priority level indication (i.e. messages are stored in corresponding queues according to their priority level, [0089], where priorities are weighted and handled according to their weighting, [0175], also see Fig. 9).

Duske and Hansen are analogous art because they are from the same field of endeavor of providing a user with mobile communication. At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the teachings of Duske with the teachings of Hansen in order to store individual messages according to their discrete priority, (Hansen, [0170]).

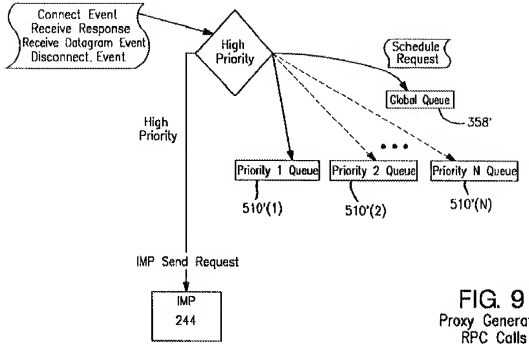


FIG. 9
Proxy Generated RPC Calls

With respect to claim 2, Duske teaches the first data structure includes a first queue, the second data structure includes a second queue, and the device log includes a third queue (i.e. first data structure may be saved log queue, second data structure may be outgoing log queue, and device log may be the network log queue, column 28, lines 1-21 and FIG 8-5).

With respect to claim 3, Duske teaches the first data structure is associated with the first priority level indication and the second data structure is associated with a second priority level indication (i.e. first data structure may be saved log queue, second data structure may be outgoing log queue, and device log may be the network log queue, column 28, lines 1-21 and FIG 8-5, and the messages are identified and transmitted with respect to their priority, which identifies their position in a queue, column 20, lines 60-63).

With respect to claim 4, Duske teaches determining whether a third information element absent from the device log includes a third priority level indication (i.e. if the information element is not in the device log, it has not been sent by the satellite, column 4, lines 40-45), storing the third information element in a third data structure when it is determined that the third information element includes the third priority level indication (i.e. when user creates message, they must specify the message priority which determines when the message should be sent, column 20, lines 40-63), and after transmitting the second message, transmitting a third message based on the third information element, wherein the ordering of transmission is further based on the first, second, and third level priority indications (i.e. messages will be sent in order with respect to their priority levels and the position in the queue, column 30, lines 64-67, see FIG 8-11).

With respect to claim 5, Duske teaches storing a fourth information element in the device log (i.e. messages are stored in the device message logs in either an outgoing message log (OML) or saved message log (SML), column 28, lines 1-9, see FIG 8-5), determining whether the fourth information element includes the first priority level indication (i.e. when user creates message, they must specify the message priority which determines when the message should be sent, column 20, lines 40-63), determining whether the first data structure includes storage available for storing the fourth information element when it is determined that the fourth information element includes the first priority level indication (i.e. system determines if there is space for a new message (which includes priority), column 28, lines 23-38), and discarding the

fourth information element from consideration of storage in the first data structure when the step of determining whether the first data structure includes storage available determines that storage for storing the fourth information element is unavailable in the first data structure (i.e. if the user is attempting to save the message and this is not possible because the system has exceeded its maximum size, the software will inform the user that this is not possible, column 28, lines 47-51).

With respect to claim 6, Duske teaches the first data structure and the second data structure are stored in a dynamic memory included in the telemetry device, and the device log is stored in a flash memory included in the telemetry device (i.e. AMC log information is stored in flash memory, column 6, lines 15-20, and the data modified by user is stored in dynamic RAM, column 16, lines 10-13).

With respect to claim 7, Duske teaches receiving a request for data of the telemetry device (i.e. network requests information from AMC, column 16, lines 55-61), and transmitting a data message based on content of the device log in response to the request (i.e. AMC sends an automatic reply with the requested information, column 16, lines 55-61).

With respect to claim 8, Duske teaches a processor configured to determine whether the first information element includes a first priority level indication, to determine whether the second information element includes a second priority level indication (i.e. when user creates message, they must specify the message priority which determines when the message should be sent, column 20, lines 40-63), to transmit a first message based on the first information element from the telemetry

device for receipt by an operation unit (i.e. message is transmitted by the AMC (adaptive mobile communication), received by the satellite network, column 7, line 56 – column 8, line 3), and after transmitting the first message, to transmit a second message based on the second information element from the telemetry device for receipt by the operation unit, wherein an ordering of transmission is based on the first and second level priority indications (i.e. messages will be sent in order with respect to their priority levels and the position in the queue, column 30, lines 64-67, see FIG 8-11).

Duske does not explicitly disclose the storage of two separate information elements of different levels in two separate data structures as claimed. However, Hansen teaches storing the first information element in a first data structure in the telemetry device when it is determined that the first information element includes the first priority level indication (i.e. messages are stored in corresponding queues according to their priority level, [0089], where priorities are weighted and handled according to their weighting, [0175], also see Fig. 9), and storing the second information element in a second data structure in the telemetry device when it is determined that the second information element includes the second priority level indication (i.e. messages are stored in corresponding queues according to their priority level, [0089], where priorities are weighted and handled according to their weighting, [0175], also see Fig. 9).

Duske and Hansen are analogous art because they are from the same field of endeavor of providing a user with mobile communication. At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the teachings of

Duske with the teachings of Hansen in order to store individual messages according to their discrete priority, (Hansen, [0170]).

With respect to claim 9, Duske teaches the first data structure includes a first queue, the second data structure includes a second queue, and the device log includes a third queue (i.e. first data structure may be saved log queue, second data structure may be outgoing log queue, and device log may be the network log queue, column 28, lines 1-21 and FIG 8-5).

With respect to claim 10, Duske teaches the first data structure is associated with the first priority level indication and the second data structure is associated with a second priority level indication (i.e. first data structure may be saved log queue, second data structure may be outgoing log queue, and device log may be the network log queue, column 28, lines 1-21 and FIG 8-5, and the messages are identified and transmitted with respect to their priority, which identifies their position in a queue, column 20, lines 60-63).

With respect to claim 11, Duske teaches the processor is further configured to determine whether a third information element absent from the device log includes a third priority level indication (i.e. if the information element is not in the device log, it has not been sent by the satellite, column 4, lines 40-45), to store the third information element in a third data structure when it is determined that the third information element includes the third priority level indication (i.e. when user creates message, they must specify the message priority which determines when the message should be sent, column 20, lines 40-63), and after transmitting the second message, to transmit a third

message based on the third information element, wherein the ordering of transmission is further based on the first, second, and third level priority indications (i.e. messages will be sent in order with respect to their priority levels and the position in the queue, column 30, lines 64-67, see FIG 8-11).

With respect to claim 12, Duske teaches the device log includes a fourth information element (i.e. messages are stored in the device message logs in either an outgoing message log (OML) or saved message log (SML), column 28, lines 1-9, see FIG 8-5), and the processor is further configured to determine whether the fourth information element includes the first priority level indication (i.e. when user creates message, they must specify the message priority which determines when the message should be sent, column 20, lines 40-63) to determine whether the first data structure includes storage available for storing the fourth information element when it is determined that the fourth information element includes the first priority level indication (i.e. system determines if there is space for a new message (which includes priority), column 28, lines 23-38), and to discard the fourth information element from consideration of storage in the first data structure when the determination of whether the first data structure includes storage available determines that storage for storing the fourth in formation element is unavailable in the first data structure (i.e. if the user is attempting to save the message and this is not possible because the system has exceeded its maximum size, the software will inform the user that this is not possible, column 28, lines 47-51).

With respect to claim 13, Duske teaches a dynamic memory including the first data structure and the second data structure, and a flash memory including the device log (i.e. AMC log information is stored in flash memory, column 6, lines 15-20, and the data modified by user is stored in dynamic RAM, column 16, lines 10-13).

With respect to claim 14, Duske teaches processor is further configured to receive a request for data of the telemetry device, and to transmit a data message based on content of the device log (i.e. network requests information from AMC, column 16, lines 55-61, and AMC sends an automatic reply with the requested information, column 16, lines 55-61).

With respect to claim 15, Duske teaches storing a first information element in a device log in the telemetry device (i.e. messages are stored in the device message logs in either an outgoing message log (OML) or saved message log (SML), column 28, lines 1-9, see FIG 8-5), determining whether the first information element includes a first priority level indication (i.e. when user creates message, they must specify the message priority which determines when the message should be sent, column 20, lines 40-63), determining whether the second information element includes a second priority level indication (i.e. when user creates message, they must specify the message priority which determines when the message should be sent, column 20, lines 40-63), transmitting a first message based on the first information element from the telemetry device for receipt by an operation unit (i.e. message is transmitted by the AMC (adaptive mobile communication), received by the satellite network, column 7, line 56 – column 8, line 3), and after transmitting the first message, transmitting a second

message based on the second information element from the telemetry device for receipt by the operation unit, wherein an ordering of transmission is based on the first and second level priority indications (i.e. messages will be sent in order with respect to their priority levels and the position in the queue, column 30, lines 64-67, see FIG 8-11).

Duske does not explicitly disclose the storage of two separate information elements of different levels in two separate data structures as claimed. However, Hansen teaches storing the first information element in a first data structure in the telemetry device when it is determined that the first information element includes the first priority level indication (i.e. messages are stored in corresponding queues according to their priority level, [0089], where priorities are weighted and handled according to their weighting, [0175], also see Fig. 9), and storing the second information element in a second data structure in the telemetry device when it is determined that the second information element includes the second priority level indication (i.e. messages are stored in corresponding queues according to their priority level, [0089], where priorities are weighted and handled according to their weighting, [0175], also see Fig. 9).

Duske and Hansen are analogous art because they are from the same field of endeavor of providing a user with mobile communication. At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the teachings of Duske with the teachings of Hansen in order to store individual messages according to their discrete priority, (Hansen, [0170]).

With respect to claim 16, Duske teaches the first data structure includes a first queue, the second data structure includes a second queue, and the device log includes a third queue (i.e. first data structure may be saved log queue, second data structure may be outgoing log queue, and device log may be the network log queue, column 28, lines 1-21 and FIG 8-5).

With respect to claim 17, Duske teaches the first data structure is associated with the first priority level indication and the second data structure is associated with a second priority level indication (i.e. first data structure may be saved log queue, second data structure may be outgoing log queue, and device log may be the network log queue, column 28, lines 1-21 and FIG 8-5, and the messages are identified and transmitted with respect to their priority, which identifies their position in a queue, column 20, lines 60-63).

With respect to claim 18, Duske teaches determining whether a third information element absent from the device log includes a third priority level indication (i.e. if the information element is not in the device log, it has not been sent by the satellite, column 4, lines 40-45), storing the third information element in a third data structure when it is determined that the third information element includes the third priority level indication (i.e. when user creates message, they must specify the message priority which determines when the message should be sent, column 20, lines 40-63), and after transmitting the second message, transmitting a third message based on the third information element, wherein the ordering of transmission is further based on the first, second, and third level priority indications (i.e. messages will be sent in order with

respect to their priority levels and the position in the queue, column 30, lines 64-67, see FIG 8-11).

With respect to claim 19, Duske teaches storing a fourth information element in the device log (i.e. messages are stored in the device message logs in either an outgoing message log (OML) or saved message log (SML), column 28, lines 1-9, see FIG 8-5), determining whether the fourth information element includes the first priority level indication (i.e. when user creates message, they must specify the message priority which determines when the message should be sent, column 20, lines 40-63), determining whether the first data structure includes storage available for storing the fourth information element when it is determined that the fourth information element includes the first priority level indication(i.e. system determines if there is space for a new message (which includes priority), column 28, lines 23-38), and discarding the fourth information element from consideration of storage in the first data structure when the step of determining whether the first data structure includes storage available determines that storage for storing the fourth information element is unavailable in the first data structure (i.e. if the user is attempting to save the message and this is not possible because the system has exceeded its maximum size, the software will inform the user that this is not possible, column 28, lines 47-51).

With respect to claim 20, Duske teaches the first data structure and the second data structure are stored in a dynamic memory included in the telemetry device, and the device log is stored in a flash memory included in the telemetry device (i.e. AMC log

information is stored in flash memory, column 6, lines 15-20, and the data modified by user is stored in dynamic RAM, column 16, lines 10-13).

With respect to claim 21, Duske teaches receiving a request for data of the telemetry device, and transmitting a data message based on content of the device log in response to the request (i.e. network requests information from AMC, column 16, lines 55-61, and AMC sends an automatic reply with the requested information, column 16, lines 55-61).

With respect to claim 22, Duske teaches storing a plurality of information elements in a device log in the telemetry device (i.e. messages are stored in the device message logs in either an outgoing message log (OML) or saved message log (SML), column 28, lines 1-9, see FIG 8-5), a selecting one of the plurality of data structures based on one of the priority indicators, and transmitting a message including one of the information elements of the selected one of the data structures from the telemetry device for receipt by an operation unit (i.e. message is transmitted by the AMC (adaptive mobile communication), received by the satellite network, column 7, line 56 – column 8, line 3, and messages will be sent in order with respect to their priority levels and the position in the queue, column 30, lines 64-67, see FIG 8-11).

Duske does not explicitly disclose the storage of two separate information elements of different levels in two separate data structures as claimed. However, Hansen teaches storing the first information element in a first data structure in the telemetry device when it is determined that the first information element includes the first priority level indication (i.e. messages are stored in corresponding queues

according to their priority level, [0089], where priorities are weighted and handled according to their weighting, [0175], also see Fig. 9), and storing the second information element in a second data structure in the telemetry device when it is determined that the second information element includes the second priority level indication (i.e. messages are stored in corresponding queues according to their priority level, [0089], where priorities are weighted and handled according to their weighting, [0175], also see Fig. 9).

Duske and Hansen are analogous art because they are from the same field of endeavor of providing a user with mobile communication. At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the teachings of Duske with the teachings of Hansen in order to store individual messages according to their discrete priority, (Hansen, [0170]).

With respect to claim 24, Duske teaches means for storing a plurality of information elements in a device log in the telemetry device (i.e. messages are stored in the device message logs in either an outgoing message log (OML) or saved message log (SML), column 28, lines 1-9, see FIG 8-5), means for selecting one of the plurality of data structures based on one of the priority indicators, and means for transmitting a message including one of the information elements of the selected one of the data structures from the telemetry device to an operation unit (i.e. message is transmitted by the AMC (adaptive mobile communication), received by the satellite network, column 7, line 56 – column 8, line 3, and messages will be sent in order with respect to their priority levels and the position in the queue, column 30, lines 64-67, see FIG 8-11).

Duske does not explicitly disclose the storage of two separate information elements of different levels in two separate data structures as claimed. However, Hansen teaches storing the first information element in a first data structure in the telemetry device when it is determined that the first information element includes the first priority level indication (i.e. messages are stored in corresponding queues according to their priority level, [0089], where priorities are weighted and handled according to their weighting, [0175], also see Fig. 9), and storing the second information element in a second data structure in the telemetry device when it is determined that the second information element includes the second priority level indication (i.e. messages are stored in corresponding queues according to their priority level, [0089], where priorities are weighted and handled according to their weighting, [0175], also see Fig. 9).

Duske and Hansen are analogous art because they are from the same field of endeavor of providing a user with mobile communication. At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the teachings of Duske with the teachings of Hansen in order to store individual messages according to their discrete priority, (Hansen, [0170]).

Claims 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frederick J. Duske, Jr. et al. (U.S. Patent 6,992,991, hereinafter, Duske) in view of Aaron D. Hanson et al. (U.S. Patent Publication 2003/0120811, hereinafter, Hanson). in view of Thomas Klein (U.S. Patent 6,178,523, hereinafter, Klein).

With respect to claim 23, the combination of Duske and Hanson teach storing the plurality of data structures in a memory including the device log. The combination of Duske and Hanson does not explicitly disclose how the telemetry device receives power when the external power fails as claimed.

However, Klein teaches how power is supplied to the telemetry device when an external power source of the telemetry device fails (i.e. if the external, main power source of the device fails, the memory stores information, column 2, lines 57 – 67, and column 3, lines 1 - 2).

Duske, Hansen, and Klein are analogous art because they are from the same field of endeavor of providing a user with communication. At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the teachings of Duske and Hansen with the teachings of Klein in order to save information in the device if external power fails (Klein, column 2, lines 57 - 67).

With respect to claim 25, the combination of Duske and Hanson teach storing the plurality of data structures in a memory including the device log. The combination of Duske and Hanson does not explicitly disclose how the telemetry device receives power when the external power fails as claimed.

However, Klein teaches how power is supplied to the telemetry device when an external power source of the telemetry device fails (i.e. if the external, main power source of the device fails, the memory stores information, column 2, lines 57 – 67, and column 3, lines 1 - 2).

Duske, Hansen, and Klein are analogous art because they are from the same field of endeavor of providing a user with communication. At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the teachings of Duske and Hansen with the teachings of Klein in order to save information in the device if external power fails (Klein, column 2, lines 57 - 67).

(10) Response to Argument

Appellant's arguments regarding the rejection of claims 1 – 22 and 24 and Examiner's response to the arguments:

Argument 1: Claims 1 – 22 and 24 are not rendered obvious by Duske, Jr. et al. and Hanson et al. because neither references discloses or suggests the claimed storage of information elements in response to priority level indications and the references constitute non – analogous art (appeal brief, page 9).

In response to **Argument** 1, Examiner asserts that combined, the prior art of record discloses the claimed storage of information elements in response to priority level indications therefore rendering claims 1 – 22 and 24 obvious over Duske in view of Hanson, and that the references constitute analogous art.

Duske discloses a system for transmitting messages (column 2, lines 38 – 40), where one embodiment would be to transmit messages to service vehicles such as

taxicabs or trucks where a variety of messages can be initiated without providing excessive loading on a satellite (column 2, lines 25 – 33). Specifically, Duske teaches:

storing a first information element in a device log in the telemetry device (i.e. messages are stored in the device message logs in either an outgoing message log (OML) or saved message log (SML), column 28, lines 1-9, see FIG 8-5 below),

determining whether the first information element includes a first priority level indication (i.e. when user creates message, they must specify the message priority which determines when the message should be sent, column 20, lines 40-63),

storing a second information element in the device log (i.e. messages are stored in the device message logs in either an outgoing message log (OML) or saved message log (SML), column 28, lines 1-9),

determining whether tile second information element includes a second priority level indication (i.e. when user creates message, they must specify the message priority which determines when the message should be sent, column 20, lines 40-63),

transmitting a first message based on the first information element from the telemetry device for receipt by an operation unit (i.e. message is transmitted by the AMC (adaptive mobile communication), received by the satellite network, column 7, line 56 – column 8, line 3), and

after transmitting the first message, transmitting a second message based on the second information element from the telemetry device for receipt by the operation unit, wherein an ordering of transmission is based on the first and second level priority

indications (i.e. messages will be sent in order with respect to their priority levels and the position in the queue, column 30, lines 64-67, see FIG 8-11 below).

FIG. 8-5

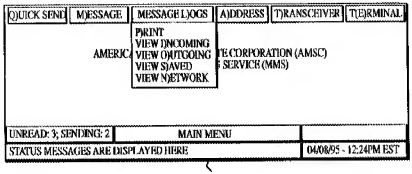
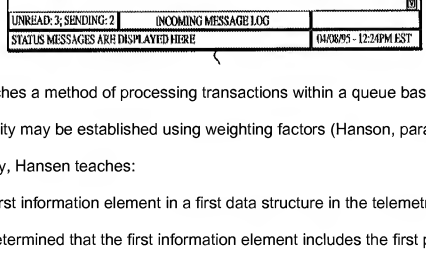


FIG. 8-11



Hanson teaches a method of processing transactions within a queue based on priority, where priority may be established using weighting factors (Hanson, paragraph [0175]). Specifically, Hansen teaches:

storing the first information element in a first data structure in the telemetry device when it is determined that the first information element includes the first priority level indication (i.e. messages are stored in corresponding queues according to their priority level, [0089], where priorities are weighted and handled according to their weighting, [0175], also see Fig. 9), and

storing the second information element in a second data structure in the telemetry device when it is determined that the second information element includes the second priority level indication (i.e. messages are stored in corresponding queues according to their priority level, [0089], where priorities are weighted and handled according to their weighting, [0175], also see Fig. 9 below).

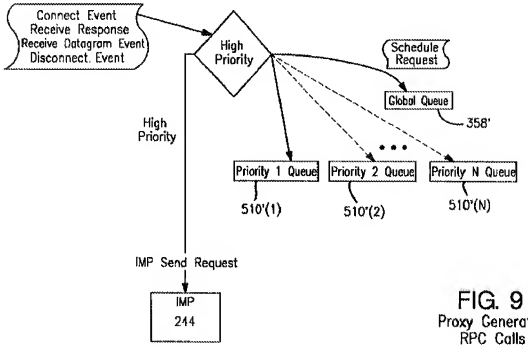


FIG. 9
Proxy Generated RPC Calls

Furthermore, Examiner could have applied the secondary reference, Hanson et al. to anticipate the claim language of the independent claims under 35 U.S.C. 102 (e). Specifically, Fig. 9 above of Hanson et al. shows that queues are created with different priority levels, which determine the order by which their contents are executed. In order for an information element to be stored in a priority queue, it must be classified or hold an identifier which determines which priority or to which queue it will be stored.

Duske and Hansen are analogous art because they are from the same field of endeavor of providing a user with mobile communication. Additionally, both references disclose priority levels of urgency for transmitting messages. At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the teachings of Duske with the teachings of Hansen in order to store individual messages according to their discrete priority, (Hansen, paragraph [0170]).

Argument 2: Hanson et al. is not concerned with the same type of priority and data structures, as those claimed (appeal brief, page 10).

In response to **Argument** 2, Examiner is entitled to give claim limitations their broadest reasonable interpretation in light of the specification. See MPEP 2111 [R-1].

Interpretation of Claims-Broadest Reasonable Interpretation

During patent examination, the pending claims must be 'given the broadest reasonable interpretation consistent with the specification.' Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541,550-51 (CCPA 1969).

Examiner further asserts that based on the language of claim 1, Applicant has not specified anything about the type of data structure in the instant application, other than that it is for a telemetry device. Applicant has not specifically claimed more than "a telemetry device."

In the instant specification paragraph [0002], Applicant defines telemetry services by referencing fleet and asset management of vehicles. Applicant further explains, "an approach for tracking mobile telemetry devices over a two-way wireless network in support of fleet and asset management is provided," (instant specification, paragraph [0009]).

Applicant attempts to differentiate between "maintaining connections to applications" of Hansen with the "transmission of messages" of the instant applications; however, this is in error. Examiner points to paragraph [0030] of Hanson, which describes that transactions are generated into messages, which is similar to the "transmission of messages" that Applicant argues for the instant application. Specifically, Hanson teaches that "the remote Procedure Call protocol generates transactions into messages that can be sent via the standard network transport protocol and infrastructure (Hanson, paragraph [0030])."

Additionally, a data structure may be used for many purposes. In the instant application and in Hanson, the data structure is established to store and determine priority in a queue (see Hanson, Fig. 9).

Using this application of telemetry devices, Examiner believes that the application of mobile devices of Hanson to teach the instant claims is reasonable.

Argument 3: Hanson et al. is not directed to the "transmission of messages," per se (other than indirectly maintaining a connection so that messages may reach their intended destination), or to the determination of whether first and second information

elements include a first and second priority level indication, respectfully (appeal brief, page 11).

In response to **Argument** 3, Examiner points to paragraph [0030] of Hanson, which describes that transactions are generated into messages, which is similar to the "transmission of messages" that Applicant argues for the instant application. Specifically, Hanson teaches that "the remote Procedure Call protocol generates transactions into messages that can be sent via the standard network transport protocol and infrastructure (Hanson, paragraph [0030])."

Additionally, Hanson explicitly teaches that system transactions are transmitted into messages in order to track and store transaction state. Specifically, in paragraph [0175], Hanson teaches:

> dispatch queues 510 are processed beginning with the highest priority queue (510(1) in this example) (block 408). Each queue 510 is assigned a weight factor. The weight factor is a configuration parameter that is returned by the configuration manager 228 when a Mobile End System 104 to Mobility Management Server 102 association is created. As one example, low priority dispatch queues 510 can have a weight factor of 4, and medium priority queues can have a weight factor of 8. High priority RPC calls do not, in this example, use weight factors because they are executed immediately as they are parsed.

Consequently, messages are being transmitted based on their priority in a queue (also see Hanson paragraphs [0030] and [0082], which show that messages are transmitted). Therefore, Applicant's argument that Hanson is not directed to the transmission of messages is clearly erroneous, as that is a main purpose of Hanson (see Hanson Fig. 9 where information is transmitted by priority using queues).

Lastly, Examiner thanks Applicant for recognizing the "priority" disclosed at paragraphs [0175] and [0089] of Hanson. Priority is based upon associations, order, sequence, importance, or with respect to another object or event.

Argument 4: The "priority" disclosed at paragraphs [0089] and [0175] of Hanson et al. relates to "association priority" or "application priority within an association," but not to the priority of first and second information elements, as claimed (appeal brief, pages 11 – 12). Thus, contrary to the Examiner's assertion, the priority levels in Hanson et al. are not related to first and second information elements, wherein a first information element is stored in a first data structure in a telemetry device when it is determined that the first information element includes a first priority level indication, and a second information element is stored in a second data structure in the telemetry device when it is determined that the second information element includes a second priority level indication (appeal brief, page 12).

In response to **Argument** 4, Examiner thanks Applicant for recognizing the "priority" disclosed at paragraphs [0089] and [0175] of Hanson. Priority is based upon associations, order, sequence, importance, or with respect to another object or event.

Specifically, Fig. 9 above of Hanson et al. shows that queues are created with different priority levels, which determine the order by which their contents are executed. In order for an information element to be stored in a priority queue, it must be classified or hold an identifier which determines which priority or to which queue it will be stored.

Examiner also points to column 20, lines 40 - 43 and 60 – 63 of Duske, where message priority may be established specifically for each individual message. Specifically, "the priority at which messages using this message proforma should be sent (emergency [3], high [5], medium [7], low [9])."

Therefore, when in combination, the prior art of record teaches that messages are sent based on their individual message priority. Both references disclose priority levels of urgency for transmitting messages. At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the teachings of Duske with the teachings of Hansen in order to store individual messages according to their discrete priority, (Hansen, paragraph [0170]).

Argument 5: However, these "messages" of Hanson et al. are not transmitted based on the priority levels of first and second information elements, wherein the first information element includes a first priority level indication and the second information element includes a second priority level indication, as claimed (appeal brief, page 12).

In response to **Argument** 5, Examiner thanks Applicant for recognizing the "priority" disclosed at paragraphs [0089] and [0175] of Hanson. Priority is based upon associations, order, sequence, importance, or with respect to another object or event.

Specifically, Fig. 9 above of Hanson et al. shows that queues are created with different priority levels, which determine the order by which their contents are executed. In order for an information element to be stored in a priority queue, it must be classified or hold an identifier which determines which priority or to which queue it will be stored.

Examiner also points to column 20, lines 40 - 43 and 60 – 63 of Duske, where message priority may be established specifically for each individual message. Specifically, "the priority at which messages using this message proforma should be sent (emergency [3], high [5], medium [7], low [9]).

Therefore, when in combination, the prior art of record teaches that messages are sent based on their individual message priority. Both references disclose priority levels of urgency for transmitting messages. At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the teachings of Duske with the teachings of Hansen in order to store individual messages according to their discrete priority, (Hansen, paragraph [0170]).

Argument 6: Hanson et al. does not teach storing information elements in separate data structures after a determination is made as to whether the information elements include priority level indications, as claimed (appeal brief, page 13).

Neither of the applied references discloses the storage of two separate information elements in two separate data structures (appeal brief, page 13).

In response to **Argument** 6, Examiner asserts that Hanson teaches that messages are stored in corresponding queues according to their priority level, [0089], where priorities are weighted and handled according to their weighting, [0175]. Additionally, Fig. 9 of Hanson et al. shows that queues are created with different priority levels, where the separate queues are separated data structures. The priority of information elements determine the order by which their contents are executed. In order for an information element to be stored in a priority queue, it must be classified or hold an identifier which determines which priority or to which queue it will be stored.

At the time of the invention, one of ordinary skill in the art would have known that if an information element is stored in a priority queue, it must first be classified or hold an identifier which determines which priority or to which queue it will be stored.

Argument 7: Hanson et al. neither discloses nor suggests such priority level indications (appeal brief, page 15).

In response to **Argument 7**, Examiner asserts that Hanson teaches that messages are stored in corresponding queues according to their priority level, [0089], where priorities are weighted and handled according to their weighting, [0175]. Additionally, Fig. 9 of Hanson et al. shows that queues are created with different priority

levels, where the separate queues are separated data structures. The priority of information elements determine the order by which their contents are executed. In order for an information element to be stored in a priority queue, it must be classified or hold an identifier which determines which priority or to which queue it will be stored.

At the time of the invention, one of ordinary skill in the art would have known that if an information element is stored in a priority queue, it must first be classified or hold an identifier which determines which priority or to which queue it will be stored.

Hanson also teaches that the RPC protocol engine handles requests to determine where they should be stored and processed after messages are initially stored in the global queue, Paragraphs [0122], [0123], [0132].

Argument 8: Hanson et al. and Duske, Jr. et al. constitute non – analogous art (appeal brief, page 16).

In response to **Argument** 8, Examiner asserts that Duske and Hansen are analogous art because they are from the same field of endeavor of providing a user with mobile communication.

Specifically, Duske discloses transporting messages between mobile terminals (see Duske, abstract), whereas Hanson discloses message transportation within a mobile environment (see Hanson, abstract).

Additionally, both references disclose priority levels of urgency for transmitting messages. At the time of the invention, it would have been obvious to one of ordinary

skill in the art to modify the teachings of Duske with the teachings of Hansen in order to store individual messages according to their discrete priority, (Hansen, paragraph [0170]).

Argument 9: There is no motivation for the combination of Hanson et al. and Duske, Jr. et al. (appeal brief, page 17).

In response to **Argument** 9, Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, Hanson teaches a system for data communication using a mobility management server to store states and complex session management, paragraph [0018]. On the other hand, Duske teaches an advanced messaging system for initiated mobile terminals that operate without providing excessive loading on a satellite, column 2, lines 30 – 34.

Additionally, both references disclose priority levels of urgency for transmitting messages. It would have been obvious to one or ordinary skill in the art to modify the teachings of Hanson with the teachings of Duske in order to efficiently manage data message transmissions (column 2, lines 41 - 67). Duske tracks messages and message

logs (figure 8 - 5), where the messages have a status (or priority) and are sent to a queue (figure 8 – 11).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the teachings of Duske with the teachings of Hansen in order to store individual messages according to their discrete priority, (Hansen, paragraph [0170]).

Appellant's arguments regarding the rejection of claims 23 and 25 and Examiner's response to the arguments:

Argument 10: Claims 23 and 25 are not rendered obvious by Duske, Jr. et al. and Hanson et al. in view of Klein because Klein does not cure the deficiencies of the other two references (appeal brief, page 21).

In response to **Argument** 10, Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, Hanson teaches a system for data communication using a mobility management server to store states and complex session management, paragraph [0018]. On the other hand, Duske teaches an advanced messaging system for initiated

mobile terminals that operate without providing excessive loading on a satellite, column 2, lines 30 – 34. Klein teaches how power is supplied to the telemetry device when an external power source of the telemetry device fails (i.e. if the external, main power source of the device fails, the memory stores information, column 2, lines 57 – 67, and column 3, lines 1 - 2).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the teachings of Duske and Hansen with the teachings of Klein in order to save information in the device if external power fails (Klein, column 2, lines 57 - 67).

In **summary**, Examiner asserts that combined, the prior art of record discloses the claimed storage of information elements in response to priority level indications and that the references constitute analogous art.

Furthermore, Examiner could have applied the secondary reference, Hanson et al. to anticipate the claim language of the independent claims under 35 U.S.C. 102 (e). Specifically, Fig. 9 above of Hanson et al. shows that queues are created with different priority levels, which determine the order by which their contents are executed. In order for an information element to be stored in a priority queue, it must be classified or hold an identifier which determines which priority or to which queue it will be stored.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Alexandria Bromell/
Examiner, AU 2167
June 3, 2010

Conferees:

/John R. Cottingham/

Supervisory Patent Examiner, Art Unit 2167

/Tim T. Vo/

Supervisory Patent Examiner, Art Unit 2168